

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

Transmittal Sheet for Opinions for Posting

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Bankruptcy Caption: In re Sidney Weinschneider

Bankruptcy No. 89 B 17026

Adversary No. 98 A 472

Adversary Caption: Daniel Hoseman, Trustee v. Sidney Weinschneider ET AL

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Judge: Ginsberg

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**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:)	Chapter 7
)	
Sidney Weinschneider,)	Case No. 89 B 17026
)	
Debtor.)	Hon. Robert E. Ginsberg
-----)		
Daniel Hoseman, Trustee,)	
Plaintiff,)	
)	
v.)	Adv. No. 98 A 00472
)	
Sidney Weinschneider, G.W. Burton and)	
Associates, Ltd., Burton Behr, and)		
Harold Geiser,)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Introduction

This matter is before the Court on the complaint for declaratory judgment filed by Plaintiff Daniel Hoseman, Trustee. The Trustee seeks a declaratory judgment finding that the cause of action, Sidney Weinschneider v. G.W. Burton & Associates, Ltd., Burton W. Behr and Harold Geiser, Cook County case number 96 L 1371, now pending in the Circuit Court of Cook County, Illinois, is property of Sidney Weinschneider's bankruptcy estate. This Court, in a Memorandum Opinion and Order dated August 3, 1999, granted summary judgment in favor of the Trustee, finding that the suit is property of the estate. However, the Debtor asserted an affirmative defense in response to the Trustee's adversary complaint; the Debtor argued that a Release and Covenant Not to Sue, signed by

the Trustee (attached as Exhibits B and C to Debtor's Second Amended Defense, filed with this Court on May 26, 1998), bars the Trustee's complaint. This Court, in the August 3, 1999 Opinion, denied summary judgment with respect to the affirmative defense. A trial was held between April and June, 2000. After the Trustee presented his case, the Debtor filed his motion for judgment on partial findings. On February 27, 2001, this Court denied the Debtor's motion for Judgment on Partial Findings under Federal Rule of Bankruptcy Procedure 7052.

Jurisdiction

This Court has jurisdiction over this matter under 28 U.S.C. § 1334(b) as a matter arising under § 541 of the Bankruptcy Code. This matter is a core proceeding under 28 U.S.C. §§157(b)(2)(E) and (O), and is before the Court pursuant to Internal Operating Procedure 15(a) (formerly known as Local Rule 2.33) of the United States District Court for the Northern District of Illinois, which automatically refers bankruptcy cases and proceedings to this Court for hearing and determination.

Discussion

The relevant facts, as set forth in this Court's Memorandum Opinions and Orders dated August 30, 1999 and February 27, 2001, are attached hereto and adopted herein. As discussed in the February 27, 2001 ruling, the Trustee made out a prima facie case by clear and convincing evidence, and therefore the Debtor's motion for judgment on partial findings was denied. After the denial of the Debtor's motion, the Debtor declined to present any evidence and the trial on this matter was concluded.

On the basis of the record before this Court and this Court's previous rulings in this matter, this Court finds in favor of the Plaintiff/Trustee and therefore grants judgment in favor of the Trustee on his complaint for declaratory judgment. For reasons stated in this Court's Memorandum Opinions of August 30, 1999 and February 27, 2001, this Court finds that the cause of action pending in the Circuit Court of Cook County, Law Division, Case No. 96 L 1371, entitled Sidney Weinschneider v. G.W. Burton and Associates, Ltd., Burton W. Behr and Harold Geiser, is property of the Debtor's bankruptcy estate. Therefore, the Trustee alone has standing to pursue the cause of action in state court. See 11 U.S.C. § 323(b).

Conclusion

For the reasons stated above, the Court grants judgment in favor of the Plaintiff and against the Defendants in the complaint for declaratory judgment. The cause of action pending in the Circuit Court of Cook County, Case No. 96 L 1371, entitled Sidney Weinschneider v. G.W. Burton and Associates, Ltd., Burton W. Behr and Harold Geiser, is property of the Debtor's bankruptcy estate. Therefore, the Trustee alone has standing to pursue the cause of action in state court.¹

ENTERED:

Dated: June 28, 2001

Robert E. Ginsberg
United States Bankruptcy Judge

¹ Nothing in this Opinion is intended in any way to determine the validity of the underlying claim by Sidney Weinschneider against G.W. Burton and Associates, Ltd., Burton Behr and Harold Geiser.